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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/686,846	10/16/2003	Esther A.L. Verbovszky	V15-6688	1764
7590 10/05/2004			EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.			SMALLEY, JAMES N	
SUITE 1111			ART UNIT	
526 SUPERIOR AVENUE			PAPER NUMBER	
CLEVELAND, OH 44114-1400			3727	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/686,846	Applicant(s) VERBOVSZKY, ESTHER A.L.	
	Examiner James N Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/16/03</u> . | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what the metes and bounds of, "raspberry effect," comprise.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Porthouse et al. US 2,269,223.

Porthouse '223 teaches a cap for a beverage bottle, having a liquid passage, first portion (10) engageable with a user's mouth, bottle clamping portion (11), disclosed in col. 2, lines 29-30 as being formed of rubber or other elastic material, stop member (17), and pull tabs (14).

4. Claims 1-2 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Goodson US 2,443,560.

Goodson '560 teaches a cap for a beverage bottle, having a liquid passage, first portion (15) engageable with a user's mouth, bottle clamping portion (19), disclosed in col. 1, lines 2-3 as being formed of rubber, stop member (25), and pull tabs (17).

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Heilborn US 2,388,915.

Porthouse '223 does not teach a raspberry effect.

Heilborn '915 teaches a raspberry effect on a nipple, teaching in col. 1, line 55 through col. 2, lines 1-4 the surface prevents undesirable slipping and provides the infant with a natural feeling of gripping with little effort.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, providing the raspberry effect taught by Heilborn '915, motivated by the benefit of preventing undesirable slipping and providing the infant with a natural feeling of gripping with little effort.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Heilborn US 2,388,915.

Goodson '560 does not teach a raspberry effect.

Heilborn '915 teaches a raspberry effect on a nipple, teaching in col. 1, line 55 through col. 2, lines 1-4 the surface prevents undesirable slipping and provides the infant with a natural feeling of gripping with little effort.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, providing the raspberry effect taught by Heilborn '915, motivated by the benefit of preventing undesirable slipping and providing the infant with a natural feeling of gripping with little effort.

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8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Pancoast US 2,709,434.

Porthouse '223 does not teach a bulbous terminal end with a plurality of ribs and a frustum portion extending from the ribs.

Pancoast '434 teaches bulbous terminal end (3) with ribs (8) and (9), and a frustum (unlabeled; located below (9)), teaching the ribs serve to allow the nipple to bend.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, providing it with the ribs (8) and (9) and frustum of Pancoast '434, motivated by the benefit of facilitating bending of the nipple.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Pancoast US 2,709,434.

Goodson '560 does not teach a bulbous terminal end above a plurality of ribs.

Pancoast '434 teaches bulbous terminal end (3) with ribs (8) and (9), and a frustum (unlabeled; located below (9)), teaching the ribs serve to allow the nipple to bend.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, providing it with the ribs (8) and (9) and frustum of Pancoast '434, motivated by the benefit of facilitating bending of the nipple.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Velonis et al. US 3,394,018.

Porthouse '223 does not teach a bulbous terminal end above a plurality of ribs.

Velonis '018 teaches a bulbous terminal nipple end (40), with a plurality of ribs (42), teaching in col. 4, lines 19-27 the ribs allow the nipple to be freely pivoted, so that it can move without impeding the flow of liquid.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, providing the bulbous terminal end and ribs as taught by Velonis '018, motivated by the benefit of allowing the nipple to pivot without impeding the flow of liquid.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Velonis et al. US 3,394,018.

Goodson '560 does not teach a bulbous terminal end above a plurality of ribs.

Velonis '018 teaches a bulbous terminal nipple end (40), with a plurality of ribs (42), teaching in col. 4, lines 19-27 the ribs allow the nipple to be freely pivoted, so that it can move without impeding the flow of liquid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, providing the bulbous terminal end and ribs as taught by Velonis '018, motivated by the benefit of allowing the nipple to pivot without impeding the flow of liquid.

12. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Klag US 5,190,174.

Porthouse '223 does not teach a bellows located below the terminal end and a frustum portion.

Klag '174 teaches a teat for a bottle, comprising a bellows (20) enabling bending and flexing of the nipple.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, providing the bellows taught by Klag '174, motivated by the benefit of enabling the nipple to bend and flex.

13. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Klag US 5,190,174.

Goodson '560 does not teach a bellows located below the terminal end and a frustum portion.

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Klag '174 teaches a teat for a bottle, comprising a bellows (20) enabling bending and flexing of the nipple.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, providing the bellows taught by Klag '174, motivated by the benefit of enabling the nipple to bend and flex.

14. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Klag US 5,190,174, as applied above to claim 7, and in further view of Condon US 2,174,361.

Porthouse '223, as modified, does not disclose a plurality of apertures.

Condon '361, fig. 4, teaches a plurality of apertures, disclosing in col. 4, lines 8-11 the structure is designed to compare with that of the human breast nipple.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, providing a plurality of apertures as taught by Condon '361, motivated by the benefit of replicating the structure of a human breast nipple.

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Klag US 5,190,174, as applied above to claim 7, and in further view of Condon US 2,174,361.

Goodson '560, as modified, does not disclose a plurality of apertures.

Condon '361, fig. 4, teaches a plurality of apertures, disclosing in col. 4, lines 8-11 the structure is designed to compare with that of the human breast nipple.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, providing a plurality of apertures as taught by Condon '361, motivated by the benefit of replicating the structure of a human breast nipple.

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16. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porthouse et al. US 2,269,223 in view of Klag US 5,190,174, as applied above to claim 7, and in further view of Tupper US 2,816,548.

Porthouse '223 does not teach tapering faces separated by curved walls creating an approximately ovular cross section.

Tupper '548 teaches a nipple comprising first and second tapering faces (21) separated by curved walls (24), creating an approximately ovular cross section. The shape fits the contours and shape of the human mouth, providing an comfortable drinking spout.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Porthouse '223, forming it with tapering faces separated by curved walls creating an approximately ovular cross section, as taught by Tupper '548, motivated by the benefit of providing a comfortable drinking spout that fits the contours and shape of a human mouth.

17. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goodson US 2,443,560 in view of Klag US 5,190,174, as applied above to claim 7, and in further view of Tupper US 2,816,548.

Goodson '560 does not teach tapering faces separated by curved walls creating an approximately ovular cross section.

Tupper '548 teaches a nipple comprising first and second tapering faces (21) separated by curved walls (24), creating an approximately ovular cross section. The shape fits the contours and shape of the human mouth, providing an comfortable drinking spout.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the nipple of Goodson '560, forming it with tapering faces separated by curved walls creating an approximately ovular cross section, as taught by Tupper '548, motivated by the benefit of providing a comfortable drinking spout that fits the contours and shape of a human mouth.

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Conclusion

18. prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Des. 384,748

US 2,693,187

US 4,428,498

US 1,541,330


US 2,805,663

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 9-7:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


Stephen K. Cronin
Primary Examiner